

1 K. Tom Kohan (CA Bar No. 225420)

2 KOHAN LAW FIRM

3 515 S. Figueroa Street, Suite 1200

4 Los Angeles, California 90071

5 Tel: 310-349-1111

6 Fax: 888-476-7010

7 Email: tom@kohanlawfirm.com

8 Attorneys for Defendant BONDED APPAREL, INC.

9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11 MINX INTERNATIONAL, INC.
12 D/B/A DAMASK FABRICS, a
13 California Corporation;

14 Plaintiff,

15 vs.

16 BONDED APPAREL, INC., a
17 California Corporation; ROSS
18 STORES, INC. d/b/a DD'S
DISCOUNTS, a Delaware
corporation; and DOES 1-20,
inclusive;

19 Defendants.

Case No. 2:15-cv-5272-ODW(FFMx)

DISCOVERY MATTER

Hon. Frederick F. Mumm

PROTECTIVE ORDER

**[Stipulation of Parties re Protective
Order Concurrently Filed Herewith]**

NOTE CHANGES MADE BY COURT

20
21 **1. PURPOSES AND LIMITATIONS**

22 Disclosure and discovery activity in this action are likely to involve
23 production of confidential, proprietary, or private information for which special
24 protection from public disclosure and from use for any purpose other than
25 prosecuting this matter would be warranted. Accordingly, the parties hereby
26 stipulate to and petition this Court to enter the following Stipulated Protective
27 Order. The parties acknowledge that this Order does not confer blanket protections
28 on all disclosures or responses to discovery and that the protection it affords
extends only to the limited information or items that are entitled under the

1 applicable legal principles to treatment as confidential. The parties have agreed
2 that the terms of this Protective Order shall also apply to any future voluntary
3 disclosures of confidential, proprietary, or private information. The parties reserve
4 their rights to object to or withhold any information, including confidential,
5 proprietary, or private information, on any other applicable grounds permitted by
6 law, including third-party rights and relevancy.

7 8 2. DEFINITIONS

9 2.1 Party: any party to this action, including all of its officers, directors,
10 employees, consultants, retained experts, and outside counsel (and their support
11 staff).

12 2.2 Disclosure or Discovery Material: all items or information, regardless
13 of the medium or manner generated, stored, or maintained (including, among other
14 things, testimony, transcripts, or tangible things), that are produced or generated in
15 disclosures or responses to discovery in this matter.

16 2.3 “Confidential” Information or Items: information (regardless of how
17 generated, stored, or maintained) or tangible things that qualify for protection
18 under standards developed under Fed. R. Civ. P. 26(c).

19 2.4 “Attorneys’ Eyes Only”: Discovery Material or such portion of such
20 material as consists of:

21 a) any commercially sensitive and/or confidential business or financial
22 information (including without limitation confidential nonpublic contracts,
23 profitability reports or estimates, sales reports, and sales margins) which could
24 reasonably create a competitive disadvantage if disclosed to the parties in this
25 action;

26 b) any business or financial information that is confidential, proprietary, or
27 commercially sensitive to third parties who have had business dealings with parties
28 to this action; or

1 c) any other category of material or information hereinafter given
2 Confidential status by the Court, to the extent said material could reasonably create
3 a competitive disadvantage if disclosed to the parties in this action.

4 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
5 from a Producing Party.

6 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
7 Material in this action.

8 2.7 Designating Party: a Party or non-party that designates information or items
9 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”
10 or “ATTORNEYS’ EYES ONLY.”

11 2.8 Protected Material: any Disclosure or Discovery Material that is designated
12 as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

13 2.9 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve
15 as an expert witness or as a consultant in this action. This definition includes a
16 professional jury or trial consultant retained in connection with this litigation. The
17 expert witness or consultant may not be a past or a current employee of the Party
18 (including any affiliates or related entities) adverse to the Party engaging the expert
19 witness or consultant, or someone who at the time of retention is anticipated to
20 become an employee of the Party (including any affiliates or related entities)
21 adverse to the Party engaging the expert witness or consultant. Moreover, the
22 expert witness or consultant may not be a current employee or anticipated to
23 become an employee of any entity who is a competitor of the Party adverse to the
24 Party engaging the expert witness or consultant.

25 2.10 Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying; videotaping; translating; preparing exhibits or
27 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.)
28 and their employees and subcontractors.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also any information copied or extracted
4 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
5 testimony, conversations, or presentations by parties or counsel to or in litigation
6 or in other settings that might reveal Protected Material.

7
8 4. DURATION

9 Even after the termination of this action, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a court order otherwise directs.

12
13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection.
15 Each Party or non-party that designates information or items for protection under
16 this Order must take care to limit any such designation to specific material that
17 qualifies under the appropriate standards. A Designating Party must take care to
18 designate for protection only those parts of material, documents, items, or oral or
19 written communications that qualify – so that other portions of the material,
20 documents, items, or communications for which protection is not warranted are not
21 swept unjustifiably within the ambit of this Order.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations that
23 are shown to be clearly unjustified, or that have been made for an improper
24 purpose (e.g., to unnecessarily encumber or retard the case development process,
25 or to impose unnecessary expenses and burdens on other parties), expose the
26 Designating Party to sanctions.

27 If it comes to a Party's or a non-party's attention that information or items
28 that it designated for protection do not qualify for protection at all, or do not

1 qualify for the level of protection initially asserted, that Party or non-party must
 2 promptly notify all other parties that it is withdrawing the mistaken designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 4 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
 5 stipulated or ordered, material that qualifies for protection under this Order must be
 6 clearly so designated before the material is disclosed or produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (apart from transcripts of depositions
 9 or other pretrial or trial proceedings), that the Producing Party affix the legend
 10 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” at the top or bottom of
 11 each page that contains protected material.

12 A Party or non-party that makes originals or copies of documents or materials
 13 available for inspection need not designate them for protection until after the
 14 inspecting Party has indicated which material it intends to copy. During the
 15 inspection and before the designation, all of the material made available for
 16 inspection shall be deemed “ATTORNEYS’ EYES ONLY.” After the inspecting
 17 Party has identified the documents it wants copied and produced, the Producing
 18 Party must designate, either in writing or on the record (at a deposition), which
 19 documents, or portions thereof, qualify for protection under this Order. Then the
 20 Receiving Party must affix the “CONFIDENTIAL” or “ATTORNEYS’ EYES
 21 ONLY” legend at the top of each copied page that contains Protected Material. If
 22 only a portion or portions of the material on a page qualifies for protection, the
 23 Producing Party also must clearly identify the protected portion(s) (e.g., by making
 24 appropriate markings in the margins) and must specify, for each portion, the level
 25 of protection being asserted (either “CONFIDENTIAL” or “ATTORNEYS’ EYES
 26 ONLY”).

27 (b) for testimony given in deposition that the Party or non-party offering or
 28 sponsoring the testimony identify on the record, before the close of the deposition,

all protected testimony, and further specify any portions of the testimony that qualify as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as “CONFIDENTIAL” or as “ATTORNEYS’ EYES ONLY.”

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is

1 appropriately designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES
2 ONLY” after the material was initially produced, the Receiving Party, on timely
3 notification of the designation, must make reasonable efforts to assure that the
4 material is treated in accordance with the provisions of this Order.

5
6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
8 confidentiality designation is necessary to avoid foreseeable substantial unfairness,
9 unnecessary economic burdens, or a later significant disruption or delay of the
10 litigation, a Party does not waive its right to challenge a confidentiality designation
11 by electing not to mount a challenge promptly after the original designation is
12 disclosed.

13 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
14 Party’s confidentiality designation must do so in good faith and must begin the
15 process by conferring with counsel for the Designating Party in writing. In
16 conferring, the challenging Party must explain the basis for its belief that the
17 confidentiality designation was not proper and must give the Designating Party an
18 opportunity to review the designated material, to reconsider the circumstances,
19 and, if no change in designation is offered, to explain the basis for the chosen
20 designation. A challenging Party may proceed to the next stage of the challenge
21 process only if it has engaged in this meet-and-confer process first.

22 6.3 Court Intervention. A Party that elects to press a challenge to a
23 confidentiality designation after considering the justification offered by the
24 Designating Party may file and serve a motion that identifies the challenged
25 material and sets forth in detail the basis for the challenge. Each such motion must
26 comply with Local Rule 37 and be accompanied by a competent declaration that
27 affirms that the movant has complied with the meet-and-confer requirements
28 imposed in the preceding paragraph and that sets forth with specificity the

1 justification for the confidentiality designation that was given by the Designating
 2 Party in the meet-and-confer dialogue. The parties agree that a confidentiality
 3 designation shall not create a presumption in favor of such confidentiality
 4 designation, and that the Court shall decide the issue as such.
 5 Until the Court rules on the challenge, all parties shall continue to afford the
 6 material in question the level of protection to which it is entitled under the
 7 Producing Party's designation.

8 9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 11 disclosed or produced by another Party or by a non-party in connection with this
 12 case only for prosecuting, defending, or attempting to settle this litigation. Such
 13 Protected Material may be disclosed only to the categories of persons and under
 14 the conditions described in this Order. When the litigation has been terminated, a
 15 Receiving Party must comply with the provisions of section 11, below (FINAL
 16 DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at a
 18 location and in a secure manner that ensures that access is limited to the persons
 19 authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 21 ordered by the Court or permitted in writing by the Designating Party, a Receiving
 22 Party may disclose any information or item designated
 23 "CONFIDENTIAL" only to:

24 (a) the Receiving Party's outside counsel, as well as employees of said outside
 25 counsel to whom it is reasonably necessary to disclose the information for this
 26 litigation;

27 (b) Board members, officers and directors of the Receiving Party;
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1 (c) Other employees of the Receiving Party to whom disclosure is reasonably
2 necessary for this litigation and who are bound by internal confidentiality
3 obligations as part of their employment or who have signed the “Acknowledgment
4 and Agreement to Be Bound” (Exhibit A);

5 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure
6 is reasonably necessary for this litigation and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (e) the Court personnel assigned to this litigation;

9 (f) court reporters, their staffs, and professional vendors to whom disclosure is
10 reasonably necessary for this litigation and who have signed the “Acknowledgment
11 and Agreement to Be Bound” (Exhibit A);

12 (g) during their depositions, witnesses in the action to whom disclosure is
13 reasonably necessary and who have signed the “Acknowledgment and Agreement
14 to Be Bound” (Exhibit A). Pages of transcribed deposition testimony or exhibits to
15 depositions that reveal Protected Material must be separately bound by the court
16 reporter and may not be disclosed to anyone except as permitted under this
17 Stipulated Protective Order; and

18 (h) the author and recipients of the document or the original source of the
19 information.

20 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items. Unless
21 otherwise ordered by the Court or permitted in writing by the Designating Party, a
22 Receiving Party may disclose any information or item designated “ATTORNEYS’
23 EYES ONLY” only to:

24 (a) the Receiving Party’s outside counsel, as well as employees of said outside
25 counsel to whom it is reasonably necessary to disclose the information for this
26 litigation;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the Court personnel assigned to this litigation;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author and recipients of the document or the original source of the information.

7.4 Nothing in this Order shall be read to prohibit the use of otherwise Protected Material to prosecute claims against additional potential defendants identified in said materials.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any Discovery Material, the Receiving Party must so notify the Designating Party, in writing immediately and in no event more than five business days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order. The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which

1 the subpoena or order issued. The Designating Party shall bear the burdens and the
2 expenses of seeking protection in that court of its confidential material – and
3 nothing in these provisions should be construed as authorizing or encouraging a
4 Receiving Party in this action to disobey a lawful directive from another court.
5

6 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
8 Protected Material to any person or in any circumstance not authorized under this
9 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
10 writing the Designating Party of the unauthorized disclosures, (b) use its best
11 efforts to retrieve all copies of the Protected Material, (c) inform the person or
12 persons to whom unauthorized disclosures were made of all the terms of this
13 Order, and (d) request such person or persons to execute the “Acknowledgment
14 and Agreement to Be Bound” that is attached hereto as Exhibit A.
15

16 10. FILING PROTECTED MATERIAL

17 Without written permission from the Designating Party, or a court order secured
18 after appropriate notice to all interested persons and after following the procedures
19 provided for in Local Rule 79-5.1, a Party may not file in the public record in this
20 action any Protected Material.
21

22 11. FINAL DISPOSITION

23 Unless otherwise ordered or agreed to in writing by the Producing Party, within 60
24 days after the final termination of this action, each Receiving Party must either
25 return all Protected Material to the Producing Party or certify the destruction of
26 said material. As used in this subdivision, “all Protected Material” includes all
27 copies, abstracts, compilations, summaries or any other form of reproducing or
28 capturing any of the Protected Material. Whether the Protected Material is returned

1 or destroyed, the Receiving Party must submit a written certification to the
2 Producing Party (and, if not the same person or entity, to the Designating Party) by
3 the 60-day deadline that identifies (by category, where appropriate) all the
4 Protected Material that was returned or destroyed and that affirms that the
5 Receiving Party has not retained any copies, abstracts, compilations, summaries or
6 other forms of reproducing or capturing any of the Protected Material.
7 Notwithstanding this provision, counsel are entitled to retain an archival copy of all
8 pleadings, motion papers, transcripts, legal memoranda, correspondence or
9 attorney work product, even if such materials contain Protected Material. Any such
10 archival copies that contain or constitute Protected Material remain subject to this
11 Protective Order as set forth in Section 4 (DURATION), above.

12 13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on
20 any ground to use in evidence of any of the material covered by this Protective
21 Order.

22 12.3 Inadvertent Production of Privileged Documents. If a Party, through
23 inadvertence, produces any document or information that it believes is immune
24 from discovery pursuant to an attorney-client privilege, the work product privilege,
25 or any other privilege, such production shall not be deemed a waiver of any
26 privilege, and the Producing Party may give written notice to the Receiving Party
27 that the document or information produced is deemed privileged and that return of
28 the document or information is requested. Upon receipt of such notice, the

1 Receiving Party shall immediately gather the original and all copies of the
2 document or information of which the Receiving Party is aware, in addition to any
3 abstracts, summaries, or descriptions thereof, and shall immediately return the
4 original and all such copies to the Producing Party. Nothing stated herein shall
5 preclude a Party from challenging an assertion by the other Party of privilege or
6 confidentiality.

7 IT IS SO ORDERED.

8
9 Dated: December ____, 2015

10 HON. FREDERICK F. MUMM
11 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print full name], of
_____ [print full address],
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Central District of California in the case of Minx International, Inc. v. Bonded
Apparel, Inc., et al., USDC Case No. 15-CV-5272-ODW-FFM, I agree to comply
with and to be bound by all of the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print full name] of
_____ [print full address
and telephone number] as my California agent for service of process in connection
with this action or any proceedings related to enforcement of this Stipulated
Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

